IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 127 OF 1996

Vithalrao D. Gole..... Appellant.

Versus

M/s. Girgaon Aradhana Co-operative Housing Society Ltd. .... Respondent.

Shri V. T. Walawalkar with Shri H. D. Gole for the Appellant.

None for the Respondent.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

Heard Shri Walawalkar, learned Counsel for the Appellant. The appeal is by the original Defendant. The challenge in this appeal from order is to the judgment and order dated 23rd January, 1996 passed in Notice of Motion No. 4930 of 1995.

2. By the impugned judgment and order, the Appellant/original defendant was directed to remove the shed built by him as shown in the photographs on

record. Learned trial Judge, however, clarified that the Appellant shall only be entitled to be in possession of the open space tenanted to him. Learned trial Judge directed that if the Appellant does not remove the shed built by him as shown in the photographs within two weeks from the date of the order, the original plaintiff shall take recourse to the Bombay Municipal Corporation for removal of shed in accordance with law.

3. I have heard Shri Walawalkar, learned Counsel for the Appellant. None appears for the Respondent.

4. Perusal of the record shows that the Civil Application No. 916 of 1996 was filed along with this appeal from order in which prayer was for stay of operation of the impugned judgment and order. The record of the said civil application shows that on 5th February, 1996 while issuing rule on the civil application, the operation of the impugned judgment and order was stayed by way of ad-interim order. The perusal of the record shows that said order dated 5th February, 1996 is still in operation. Thus the order passed by the trial Court directing the Appellant to remove the shed built by him has not operated for the

last more than 9 years. Shri Walawalkar states that the suit is till pending. He submitted that the order of removing the shed could not have been passed by way of an interim relief.

5. As the order impugned has remained stayed for a period of more than 9 years and as the suit is of the year 1995, in the facts and circumstances of the case it will be unjust to disturb the status quo as prevailing today.

6. Hence, I dispose of the appeal by directing that the ad-interim order passed by this Court on 5th February, 1996 in Civil Application No. 916 of 1996 will continue to operate till the final disposal of the suit. Learned trial Judge will hear and decide the suit as expeditiously as possible. All contentions of the parties on merits of the suit are kept open. It is made clear that notwithstanding grant of stay by this Court and notwithstanding continuation of the said order passed by this Court, it will be open for the trial Court to consider all the prayers made in the suit on its merits without being influenced by the order of stay granted by this Court.

7. Appeal from order disposed of accordingly with no order as to costs.

8. Parties and the concerned Court to act on an authenticated copy of this order.

Sd/-

(**A. S. OKA, J.**)